

**U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
RIDGECREST FIELD OFFICE
300 South Richmond Rd.
Ridgecrest, CA 93555**

**Decision Record
and
Finding of No Significant Impact
for**

**The Interim Closure to Motorized Vehicle Use
of Selected Routes Within the
Western Rand Mountains
Area of Critical Environmental Concern

Kern County, California**

Prepared by:

**U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
Ridgecrest Field Office**

Environmental Assessment CA-650-02-69

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DECISION

Based on review of the Environmental Assessment (CA-680-02-69) (EA) and my Finding of No Significant Impacts, my decision is to approve the interim closure of 29 miles of selected dirt roads and trails (R5, R50, R40, R15, R25, R35, R 37, R12 and R 48) and all other unauthorized routes and trails in the Western Rand Mountains ACEC to the use of motorized vehicles. The interim closure is within an area of approximately 17,877 acres located within the boundaries of the California Desert Conservation Area (CDCA).

I have determined it necessary to use my authority under 43 Code of Federal Regulations (CFR) 8341.2(a) to close the identified area to vehicle use on certain roads and trails in order for BLM to provide additional protection for threatened and endangered species listed under the Endangered Species Act (ESA). Therefore, this restriction will take effect immediately and will remain in effect until a record of decision is signed for the West Mojave Plan, which is expected to be signed in June 2003. Certain exceptions apply to vehicles on official government business as approved by the authorized officer.

Implementation of the temporary restriction will include identifying the closed routes on the ground with standard signs; and where needed, placing temporary barriers across the entrance of the route to prevent travel by off-road vehicles. Implementation will also include enhanced public outreach, visitor contact, and law enforcement above current levels. Sign maintenance, and visitor contact and law enforcement patrols will be regularly scheduled. The purpose of visitor service contacts will be to achieve voluntary compliance of use of the signed routes.

RATIONALE

This decision is necessary because desert tortoise populations throughout the California Desert have been reduced considerably over the last several years as a result of a variety of causes. Desert tortoise experts testified in July 2001 as to the substantial decline in the tortoise population within the CDCA and the need for affirmative action to protect and stabilize the remaining population (Blincoe, et al. v. BLM, CA-690-01-02; CA-690-01-03, CA-690-01-04, CA-680-01-03, CA-680-01-04, CA-680-01-05, CA-680-01-06, Decision dated August 24, 2001, p.20 et seq)). The desert tortoise is federally listed as a threatened species by the Fish and Wildlife Service (FWS) in accordance with the Endangered Species Act (ESA). In addition, visitor compliance with the Western Rand Mountains ACEC motorized vehicle designated route system has been poor. Recent

surveys show that over 90% of the closed routes are regularly being ridden by OHV visitors. By taking this interim closure action, BLM will provide additional protection for the threatened desert tortoise and its habitat while a long-term management strategy is developed. BLM is currently developing such strategy as part of the West Mojave plan which is scheduled for completion in the June 3, 2003.

BLM recognizes that the interim closure will displace some OHV users. OHV users who utilized the area will be able to recreate on the remaining 100 miles of designated routes in the Rand Mountains as well as within the nearby Spangler Hills, Jawbone and Dove Springs Off Highway Vehicle Recreation Areas. Within the West Mojave region at large, the Stoddard Valley, Johnson Valley, El Mirage, Rasor and Dumont Dunes are also available for OHV recreation. The closure will not have a significant negative impact on recreation since the closure is temporary and other areas in the region can fully accommodate the displaced users.

43 CFR 8341.2(a) provides that the authorized officer shall immediately close an area when he determines that OHV use is causing or will cause considerable adverse effects upon soil, vegetation, wildlife, wildlife habitat, cultural resources, historical resources, threatened or endangered species, other authorized uses, or other resources. Because tortoise populations in the CDCA are in substantial decline as a result of OHV and other impacts, and the issuance of a record of decision on the West Mojave plan is not anticipated until June 2003, BLM concludes immediate closure under 43 CFR 8341.2(a) is necessary. There is a considerable body of literature that indicates OHV use and related recreational activities can have adverse effects upon the tortoise (references cited list; see also EA references list).

The Western Rand Mountains ACEC is located in the Fremont-Kramer Critical Habitat Unit in the Western Mojave Recovery Unit for the desert tortoise (*Gopherus agassizii*), a State and federally listed as threatened species. The numerous OHV roads/trails in the area impact the constituent elements (cover from a fairly contiguous shrub canopy with moderate interspaces, uncompacted soils suitable for burrowing, a healthy plant community with a low amount of non-native species and low to moderate diversity, and a small amount of anthropogenic induced disturbances) necessary for desert tortoise habitat.

On March 16, 2000, the Center for Biological Diversity, et al (Center) filed for injunctive relief in U.S. District Court, Northern District of California (Court) against BLM. The Center alleged the BLM was in violation of Section 7 of the ESA by failing to enter into formal consultation with the FWS on the effects of adoption of the CDCA Plan, as amended, upon threatened and endangered species. Instead of litigating the case, and facing a possible injunction of all authorized desert activities, BLM entered into five stipulated agreements. On March 20, 2001, this stipulation became effective.

Lawsuit settlement negotiations resulted in the court approval of a stipulation entitled *All Further Injunctive Relief*. On March 20, 2001, this stipulation became effective. Due to continued non-compliance in the Western Rand Mountains ACEC, the Center filed in February 2002, a 60 day

notice of an intent to file a law suit under the Endangered Species Act for failure to comply with the Biological Opinion issued for the Rand Mountains Fremont Valley Management Plan. In March 2002, the BLM and the Center agreed to propose an amendment to the All Injunctive Relief Stipulation by adding the following provision:

“BLM will close and sign all routes within the Western Rand ACEC by March 30, 2002 pursuant to the Rand Mountain - Fremont Valley Biological Opinion (1-6-90F 54R). BLM will block major access points needing a physical barrier by September 30, 2002. The closure will not affect administratively approved travel by BLM and its volunteer agents and contractors conducting associated habitat restoration and rehabilitation and other administrative work. The closure will remain in effect until the West Mojave Plan’s Record of Decision is signed.”

Although precipitated by the Center’s lawsuit, BLM has initially reviewed its current management of the Western Rand Mountains ACEC area under the CDCA plan, the Rand Mountain Fremont Valley Management Plan and the Biological Opinion issued by the U.S. Fish & Wildlife Service as it relates to the protection of the desert tortoise in this ACEC. Under the Biological Opinion (1-6-90-F-54R) issued for the Rand Mountain Fremont Valley Management Plan in 1993, the U.S. Fish & Wildlife Service required the BLM to develop a monitoring program to ensure the objectives of the plan were being met. The USFWS stipulated that:

“Any level of adverse impact or degradation of the management area should require immediate attention. Compliance with vehicular regulations must be good (light non-compliance) in the southwest corner of the management area (west of R45 and south of R50 - figure 1) and must reach excellent in the remainder of the management area within 2 years of adoption of the Plan. If this objective is not met, the majority of routes in the management area would be closed.” pg 6

According to the Biological Opinion for this area, this high level of visitor compliance with the BLM’s OHV management regulations for the ACEC had to be reached by December 1995. Since visitor compliance has not reached this level, given an additional 7 years beyond the USFWS deadline, the proposed action of closing routes within the Western Rand Mountains ACEC, would be consistent with the Biological Opinion and the special rules identified in 43 CFR 8341.2.

As an interim measure, BLM implements this closure to provide additional protection to the tortoise pending implementation of the yet to be completed West Mojave plan. By implementing this interim closure, BLM ensures compliance with sections 7(a) and 7 (d) of the ESA. Section 7(a)(1) of the ESA provides that Federal agencies are to utilize their authorities to further the purposes of the Act by carrying out programs for the conservation of listed species (16 USC 1536(a)(1)). Section 7(d) of the ESA provides that after initiation of consultation under §7(a)(2), a Federal agency shall not make any irreversible or irretrievable commitment of resources with respect to agency action which has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures which would not violate the requirements of the ESA.

The interim closure of this area is consistent with the *California Desert Conservation Area (CDCA) Plan*, 1980, as amended. The CDCA Plan contains general and specific direction for the protection of listed species, such as the taking of appropriate action, including closure of routes and areas (CDCA Plan, page 82, March 1999 reprinted version).

APPEAL RIGHTS

This decision is effective immediately. This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR Part 4 and the enclosed Form 1842-1. If an appeal is taken, your notice of appeal must be filed in this office (at the above address) within 30 days from receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition pursuant for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal (43 CFR 4.21). A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay **must** also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR 4.413). If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

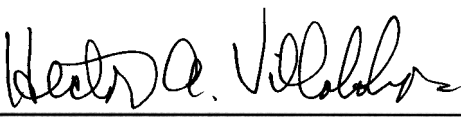
Standards for Obtaining a Stay

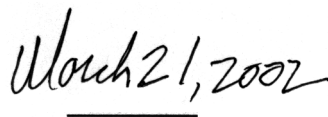
Accept as otherwise provided by law or other pertinent regulations, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

- (1) the relative harm to the parties if the stay is granted or denied,
- (2) the likelihood of the appellant's success on the merits,
- (3) the likelihood of immediate and irreparable harm if the stay is not granted, and
- (4) whether the public interest favors granting the stay.

IMPACT OF THE DECISION ON THE HUMAN ENVIRONMENT

After reviewing the environmental assessment (CA650-02-69) and considering the effects of the interim closure decision on the human environment, I have determined that the closure is not a major federal action and the level of impact is not significant. Based on this finding, the preparation of an environmental impact statement under the provisions of the National Environmental Policy Act (see criteria in Title 40 Code of Federal Regulations, Subpart 1508) is not required.

Approved by 
Hector A. Villalobos, Manager
Ridgecrest Field Office


Date

References

Federal Register Vol 54, No. 149 pp. 32326-32331, Emergency Listing as Endangered, August 4, 1989.

Federal Register Vol 55, No. 63 pp. 12178-12190, Regular Rule-Making Listing as Threatened, April 2, 1990.

Federal Register Vol 59, No. 26 pp. 5820-5866, Critical Habitat Final Rule, February 8, 1994.

Rand Mountain Fremont Valley Management Plan, U.S. Department of the Interior, Bureau of Land Management, California Desert District, Ridgecrest Field Office, August 1993.

U. S. Fish and Wildlife Service. 1993. Biological Opinion for the Rand Mountain-Fremont Valley Management Plan (1-6-90-F-54R).

Sweitzer, Harvey C., Administrative Law Judge; Decision of August 24, 2001; Appeal of Bureau of Land Management Final Grazing Decision and Decision Record; Richard Blincoe and Blincoe Farms, et al.